

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

AMERICAN LIFE, INC., a Washington
corporation,

Plaintiff,

v.

EB-5 UNITED, LLC, a Washington limited
liability company,

Defendant.

No.

COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES AND
DEMAND FOR JURY

I. INTRODUCTION

1. Plaintiff American Life, Inc. ("ALI") is a real estate development company operating in major markets throughout the United States. ALI's principal source of funding its projects is through the EB-5 immigrant investor program, which allows foreign nationals to invest in an approved United States business and receive permanent U.S. residency green cards.

2. Defendant EB-5 United, LLC ("EB-5 United") is also a real estate development company operating throughout the United States, and is a direct competitor of ALI. EB-5 United's website touts as one of its purported "representative projects" a project involving the construction of a Courtyard by Marriott Hotel/Residence Inn hotel located at 901 West Olympic

COMPLAINT FOR INJUNCTIVE RELIEF AND
DAMAGES AND DEMAND FOR JURY- 1

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

1 Boulevard in Los Angeles (the "Hotel Project"). EB-5 United had absolutely nothing to do with
2 the development of the Hotel Project and is using that project as a means of diverting prospective
3 investors away from ALI's projects and towards EB-5 United.

4 3. ALI is the managing partner of 901 West Olympic Boulevard Limited
5 Partnership, the entity that owns and operates the Hotel Project.

6 4. ALI now seeks an injunction against EB-5 United and money damages for EB-5
7 United's misleading use of ALI's Hotel Project.

8 II. PARTIES

9
10 5. Plaintiff ALI is a duly incorporated and licensed Washington corporation in good
11 standing, with its principal place of business located in Seattle, Washington.

12 6. Defendant EB-5 United is a Washington limited liability corporation whose
13 registered representative is located in Vancouver, Washington. EB-5 United's corporate offices
14 are located at 604 Arizona Avenue, Santa Monica, California 90401.

15 III. JURISDICTION AND VENUE

16
17 7. This Court has personal jurisdiction over defendant EB-5 United, because
18 defendant transacts business in the State of Washington, and transacts business through the
19 internet into Washington, and is a Washington limited liability company. The internet is an
20 instrument of commerce which defendant uses to reach into this district.

21 8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
22 § 1331, because one or more of the claims at issue arises under federal law, specifically the
23 Lanham Act, 15 U.S.C. §§ 1051 et seq., including §1125(a).

24 9. This Court has supplemental jurisdiction over the state law claims at issue in this
25 action pursuant to 28 U.S.C. § 1367, because these claims are so related to the federal law claims
26

COMPLAINT FOR INJUNCTIVE RELIEF AND
DAMAGES AND DEMAND FOR JURY- 2

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

1 as to form part of the same case or controversy; that is, they arise out of a common nucleus of
2 operative facts.

3 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because a
4 substantial portion of the events giving rise to the claims in this action occurred in this District,
5 the injuries presented in this action occurred in this District, Plaintiff resides in this District, and
6 Defendant may be found in this District.

7 IV. FACTUAL BACKGROUND

8 11. Since 1996, ALI has worked with approximately 1,700 foreign investors, through
9 the EB-5 program, who have obtained "green cards" allowing residency in the United States as a
10 result of their investments through ALI affiliates. ALI was one of the first developers to use the
11 EB-5 immigrant investor program as a business model for financing its projects.

12 12. ALI initially focused its operations on developments in Seattle, Washington.
13 Beginning in 2006, ALI branched out to other areas located throughout the United States,
14 including Southern California. There, ALI was responsible for the development of the Hotel
15 Project.
16

17 13. EB-5 United was formed as a Washington limited liability company on or about
18 December 5, 2013.
19

20 14. B. Scott Fuller is one of EB-5 United's members and its registered agent. With
21 regard to Mr. Fuller, EB-5 United's website states, "In 2013 Scott founded EB5 United to
22 provide equity and debt capital to real estate developers through the EB-5 program."
23

24 15. EB-5 United's website contains a page titled, in large print, "Representative
25 Projects." Attached hereto as Exhibit A is a true and correct copy of the referenced page of EB-5
26 United's current website. In smaller print appears the text, "Current projects and ones completed

1 by EB-5 United principals.” The same web-page contains photographs of two “approved”
2 projects. The one in the middle of the page is a photograph of the Hotel Project. If one places
3 the cursor of a computer on the photograph, the following text appears on the screen:

4 LA LIVE COURTYARD / RESIDENCE INN, LOS ANGELES

5 Role: Co-Development Team, LLC Member

6 Project Size: 400 rooms

7 EB-5 Equity: \$176 million

8 I-526 Approval: 100%

9 16. The foregoing text and photograph are false or misleading descriptions of fact
10 designed and intended to associate EB-5 United with ALI’s Hotel Project when EB-5 United and
11 EB-5 United’s principals were not members of the Hotel Project’s development team or EB-5
12 offering team. The foregoing text and photograph were placed on EB-5 United’s website
13 willfully.

14 17. EB-5 United had no involvement in the Hotel Project. It was not a “co-
15 development team, LLC member.”

16 18. EB-5 United played no role in obtaining the approval of foreign investors in the
17 Hotel Project for residency “green cards.”

18 19. At no time has EB-5 United held an equity interest in the Hotel Project of \$176
19 million. At no time has EB-5 United held an equity interest in the Hotel Project of any amount.

20 20. EB-5 United’s principals had no involvement in the Hotel Project. They were not
21 a “co-development team, LLC member.”

22 21. EB-5 United’s principals played no role in obtaining the approval of foreign
23 investors in the Hotel Project for residency “green cards.”
24
25
26

COMPLAINT FOR INJUNCTIVE RELIEF AND
DAMAGES AND DEMAND FOR JURY- 4

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

1 22. At no time have any of EB-5 United's principals held an equity interest in the
2 Hotel Project of \$176 million. At no time have any of EB-5 United's principals held an equity
3 interest in the Hotel Project of any amount.

4 23. EB-5 United's use of a photograph of ALI's Hotel Project and accompanying text
5 falsely and misleadingly associating EB-5 United with the Hotel Project was for the purpose of
6 promoting, marketing, and selling its services to prospective investors, in competition with ALI.

7 24. By email sent to Mr. Fuller on July 2, 2014, ALI requested that EB-5 United
8 remove the photograph of the Hotel Project from its website. EB-5 United has refused and failed
9 to remove the photograph.

10 25. By letter sent to Mr. Fuller by email on July 2, 2014, ALI's attorneys demanded
11 that EB-5 United remove the "name, information, and images" of the Hotel Project from its
12 website. Attached hereto as Exhibit B is a true and correct copy of the foregoing letter.

13 26. In response, Mr. Fuller sent an email that same day, explaining that he was "part
14 of the development team" for the Hotel Project. The asserted basis for this claimed involvement
15 is that, according to Mr. Fuller, he is "the sole member of the Fuller Family LLC which is the
16 sole member of Nomad Ventures LLC. Nomad Ventures is a member of WDA Olympic
17 Development LLC. WDA Olympic Development LLC is a general partner of 901 West Olympic
18 Boulevard Limited Partnership."

19 27. Thus, EB-5 United's stated basis for its claim that the Hotel Project was
20 "completed by EB-5 United principals" is that Mr. Fuller claims to be (1) the member of a
21 limited liability company that is (2) the member of another limited liability company that is (3)
22 one of a number of members of a limited liability company that is (4) a general partner in the
23 limited partnership responsible for the Hotel Project.
24
25
26

COMPLAINT FOR INJUNCTIVE RELIEF AND
DAMAGES AND DEMAND FOR JURY- 5

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

28. WDA Olympic Development LLC, the general partner of 901 West Olympic Boulevard Limited Partnership referred to by Mr. Fuller, is an Oregon limited liability company. Mr. Fuller neither manages nor controls WDA Olympic Development LLC. Its manager is WD Olympic Holdings, LLC, an Oregon limited liability company. WD Olympic Holdings, LLC's manager is HGW Inc., an Oregon corporation. Homer G. Williams is the sole officer of HGW, Inc.

29. WDA Olympic Development LLC played a limited role in the Hotel Project restricted to obtaining building permits and entitlements for the project. ALI is the managing general partner of the Hotel Project.

30. Mr. Fuller did not "complete" the Hotel Project. Mr. Fuller was not part of the "development team" that completed the Hotel Project.

31. EB5-United has refused and failed to remove references to the Hotel Project from its website despite ALI's demand that it do so and despite EB5-United's knowledge of its false and misleading advertising.

V. COUNTS

COUNT ONE

DEFENDANT EB-5 UNITED IS LIABLE TO ALI FOR UNFAIR COMPETITION AND FALSE ADVERTISING IN VIOLATION OF THE LANHAM ACT

32. ALI realleges the previous paragraphs of this Complaint as if fully set forth herein.

33. EB-5 United's use of photographs of ALI's Hotel Project and accompanying text falsely and misleadingly associating EB-5 United with the Hotel Project for the purpose of promoting, marketing, and selling its services to prospective investors, in competition with ALI, constitutes unfair competition through false advertising pursuant to 15 U.S.C. § 1125(a).

COMPLAINT FOR INJUNCTIVE RELIEF AND
DAMAGES AND DEMAND FOR JURY- 6

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

1 34. EB-5 United has used false or misleading descriptions of fact in interstate
2 commerce in connection with its services in its website, where the description or representation
3 misrepresents EB-5 United's role in the Hotel Project and association with ALI.

4 35. EB-5 United's unfair competition and false advertising have caused, and will
5 continue to cause, damage to ALI; and further, EB-5 United's conduct is causing irreparable
6 harm to ALI for which there is no adequate remedy otherwise available at law.

7 36. Such irreparable harm will continue unless EB-5 United's acts are restrained and
8 enjoined during the pendency of this action, and permanently thereafter.

9 37. As a direct and proximate result thereof, EB-5 United is liable to ALI for
10 compensatory damages, together with EB-5 United's profits, trebled in accordance with 15
11 U.S.C. § 1117, together with attorneys' fees and costs provided thereunder, all in an amount to
12 be determined at trial.
13

14 **COUNT TWO**

15 **VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT**

16 38. ALI realleges the previous paragraphs of this Complaint as if fully set forth
17 herein.
18

19 39. By reason of the foregoing, EB-5 United engaged in an unfair or deceptive act or
20 practice, occurring within the conduct of trade or commerce, affecting the public interest,
21 injuring ALI's business or property, in violation of the Washington Unfair Business
22 Practices/Consumer Protection Act, RCW Chap. 19.86.
23

24 40. As a direct and proximate result thereof, EB-5 United is liable to ALI for
25 compensatory damages, together with treble damages and attorneys' fees and costs pursuant to
26 RCW 19.86.090, all in an amount to be determined at trial.

COMPLAINT FOR INJUNCTIVE RELIEF AND
DAMAGES AND DEMAND FOR JURY- 7

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

COUNT THREE

TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS

41. ALI realleges the previous paragraphs of this Complaint as if fully set forth herein.

42. By reason of the foregoing, EB-5 United, with knowledge of ALI's prospective business relationships and/or business expectancies, intentionally interfered with said relationships and/or expectancies for an improper purpose or by improper means, thereby inducing or causing a breach or termination of the expectancy.

43. As a direct and proximate result of the foregoing, EB-5 United is liable to ALI for damages in an amount to be determined at trial, for tortious interference with prospective business relations.

COUNT FOUR

UNJUST ENRICHMENT

44. ALI realleges the previous paragraphs of this Complaint as if fully set forth herein.

45. The foregoing actions by EB-5 United have conferred a benefit on EB-5 United. EB-5 United received and enjoyed such benefits under conditions where it would be inequitable for EB-5 United to retain the benefits without paying the value thereof. ALI is entitled to recover from EB-5 United an amount equal to the value of such benefits conferred.

46. By reason of the foregoing, EB-5 United is liable to ALI for unjust enrichment in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiff ALI requests entry of judgment and relief as follows:

COMPLAINT FOR INJUNCTIVE RELIEF AND
DAMAGES AND DEMAND FOR JURY- 8

KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

1 1. That Defendant EB-5 United's conduct be declared improper and unlawful
2 pursuant to the Lanham Act, the Washington Unfair Business Practices / Consumer Protection
3 Act, and common law;

4 2. That EB-5 United, its subsidiaries, subdivisions, affiliates, principals, officers,
5 employees, agents, and all other persons associated with or acting in concert with EB-5 United,
6 be permanently enjoined from using photographs or the name of any development projects of
7 ALI projects, including but not limited to the Hotel Project, in advertising, marketing, or other
8 promotions or solicitations in connection with EB-5 United's business;

9 3. That EB-5 United, its subsidiaries, subdivisions, affiliates, principals, officers,
10 employees, agents, and all other persons associated with or acting in concert with EB-5 United
11 be permanently enjoined from falsely associating its limited liability company, subsidiaries,
12 subdivisions, affiliates, principals, officers, employees, agents, and development projects and
13 operations with ALI and its development projects and operations, or otherwise from performing
14 any other act likely to create the appearance or belief that EB-5 United, its subsidiaries,
15 subdivisions, affiliates, principals, officers, employees, agents, and all other persons associated
16 with EB-5 United are in any way licensed, sponsored, endorsed, or otherwise associated with
17 ALI and its projects;

18 4. That EB-5 United be ordered to pay ALI compensatory damages, including all
19 profits made as a result of EB-5 United's wrongful conduct;

20 5. That EB-5 United be ordered to pay ALI treble damages pursuant to 15 U.S.C.
21 §117(a)(3) and RCW 19.86.090;

22 6. That EB5-United be ordered to pay ALI for all of its reasonable costs and
23 attorneys' fees pursuant to RCW 19.86.090 and 15 U.S.C. § 1117(a)(3);
24
25
26

COMPLAINT FOR INJUNCTIVE RELIEF AND
DAMAGES AND DEMAND FOR JURY- 9

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

8. All additional and further relief this Court believes just and proper.

JURY DEMAND

American Life, Inc. requests its causes of action be tried by jury.

RESPECTFULLY SUBMITTED this 18th day of August, 2014.

KELLER ROHRBACK L.L.P.

/s/ Rob J. Crichton

Rob J. Crichton, WSBA #20471

Karin B. Swope, WSBA #24015

1201 Third Avenue, Suite 3200

Seattle, Washington 98101

Telephone: 206/428-0561 / Fax: 206/623-3384

rcrichton@kellerrohrback.com

kswope@kellerrohrback.com

COMPLAINT FOR INJUNCTIVE RELIEF AND
DAMAGES AND DEMAND FOR JURY- 10

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of August, 2014, I filed the foregoing electronically through the CM/ECF system, which caused the following counsel to be served by electronic means:

The following parties have not yet appeared or registered with ECF and will be served via U.S. Mail:

B. Scott Fuller, Registered Agent
EB-5 United, L.L.C.
501 SE Columbia Shores Blvd., Ste. 400
Vancouver, WA 98551

/s/ Rob J. Crichton
Rob J. Crichton, WSBA #20471
Keller Rohrback L.L.P.
Attorneys for Plaintiff

COMPLAINT FOR INJUNCTIVE RELIEF AND
DAMAGES AND DEMAND FOR JURY- 11

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384


EXHIBIT A

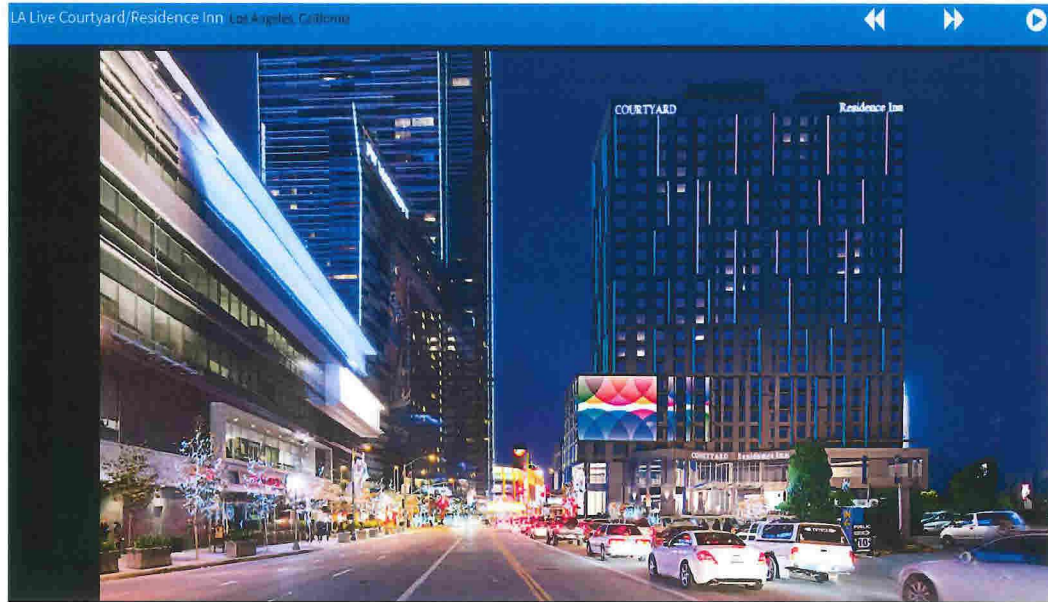
home about eb-5 advantages team projects

Representative Projects

Current projects and ones completed by EB-5 United principals.

Projects







**LA LIVE COURTYARD/RESIDENCE INN, LOS
ANGELES**

Role: Co-Development Team, LLC Member

Project Size: 400 rooms

EB-5 Equity: \$176 million

I-526 Approval: 100%

EXHIBIT B

KELLER ROHRBACK L.L.P.

LAURIE B. ASHTON ① ⑤ ⑥
 IAN S. BIRK
 JAMES A. BLOOM ① ⑤
 STEPHEN R. BOATWRIGHT ① ⑤
 KAREN E. BOXX
 GRETCHEN FREEMAN CAPPIO
 ALISON CHASE ① ④ ⑤
 T. DAVID COPLEY ③
 ALICIA M. CORBETT ① ⑤
 ROB J. CRICHTON ②
 DANIEL A. DECESARO
 MAUREEN M. FALECKI
 JULI FARRIS ④
 RAYMOND J. FARROW
 ERIC J. FIERRO ① ⑤
 ALISON S. GAFFNEY
 GLEN P. GARRISON ⑥
 LAURA R. GERBER
 MATTHEW M. GEREND
 DEIRDRE P. GLYNN LEVIN

GARY A. GOTTO ① ⑤
 BENJAMIN GOULD ④
 CHRISTOPHER GRAVER ① ⑤
 GARY D. GREENWALD ① ④ ⑤
 MARK A. GRIFFIN ③
 AMY N.L. HANSON
 IRENE M. HECHT
 SCOTT C. HENDERSON
 HOLLY E. HINTERBERGER
 MICHAEL G. HOWARD
 KHESRAW KARMAND ② ⑤
 DEAN N. KAWAMOTO ④ ⑤
 RON KILGARD ① ② ⑤ ⑥
 SUSAN A. KIM ④ ⑤
 KATHRYN M. KNUDSEN
 DAVID J. KO
 ERIC R. LALIBERTE
 BENJAMIN J. LANTZ
 CARI CAMPEN LAUFENBERG
 ELIZABETH A. LELAND

MICHAEL M. LICATA
 TANA LIN ⑦ ⑨ ⑥
 DEREK W. LOESER
 RYAN MCDEVITT
 DANIEL MENSHER ② ⑤
 IAN J. MENSHER
 GRETCHEN S. OBRIST
 ROBERT S. OVER
 DAVID S. PREMINGER ① ⑤
 MATTHEW J. PREUSCH ② ⑤
 ERIN M. RILEY
 ISAAC RUIZ
 DAVID J. RUSSELL
 MARK D. SAMSON ① ⑤ ⑥
 LYNN LINCOLN SARKO ⑤ ⑦
 WILLIAM C. SMART
 THOMAS A. STERKEN
 BETH M. STROSKY
 KARIN B. SWOPE
 PAUL A. TONELLA

HAVILA C. UNREIN ④ ⑥
 MARGARET E. WETHERALD ⑤
 HARRY WILLIAMS, IV ⑤
 AMY WILLIAMS-DERRY
 MICHAEL WOERNER
 BENSON D. WONG
 DIANA M. ZOTTMAN ③

① ADMITTED IN ARIZONA
 ② ADMITTED IN CALIFORNIA
 ③ ALSO ADMITTED IN ARIZONA
 ④ ALSO ADMITTED IN CALIFORNIA
 ⑤ ALSO ADMITTED IN COLORADO
 ⑥ ALSO ADMITTED IN IDAHO
 ⑦ ALSO ADMITTED IN ILLINOIS
 ⑧ ALSO ADMITTED IN MARYLAND
 ⑨ ALSO ADMITTED IN MICHIGAN
 ⑩ ALSO ADMITTED IN MONTANA
 ⑪ ADMITTED IN NEW YORK
 ⑫ ALSO ADMITTED IN NEW YORK
 ⑬ ALSO ADMITTED IN OREGON
 ⑭ ALSO ADMITTED IN OHIO
 ⑮ ALSO ADMITTED IN TEXAS
 ⑯ ALSO ADMITTED IN WASHINGTON, D.C.
 ⑰ ALSO ADMITTED IN WISCONSIN
 ⑱ NOT ADMITTED IN WASHINGTON

July 2, 2014

**CERTIFIED MAIL; US MAIL AND
 EMAIL: scott@eb5united.com**

EB-5 United LLC
 501 SE Columbia Shores Blvd
 Suite 400
 Vancouver, WA 98661
 Attn: B. Scott Fuller

Re: Cease and Desist Use of 901 West Olympic Boulevard Limited Partnership's
 name, information, and images

Dear Mr. Fuller:

We represent 901 West Olympic Boulevard Limited Partnership in connection with the above referenced matter. Your web site, www.eb5united.com, and marketing information misrepresents, misappropriates, and contains unauthorized names, information, and images of the building owned by 901 West Olympic Boulevard Limited Partnership—the L.A. Live Courtyard/Residence Inn ("Project"). It appears that you are attempting to mislead the public and potential investors regarding your alleged involvement in the Project. Your use of or reference to the Project developed by 901 West Olympic Boulevard Limited Partnership and its name, information, and images is a violation of 901 West Olympic Boulevard Limited Partnership's intellectual property rights, trademark rights, common law rights, and trade name rights, and this letter constitutes 901 West Olympic Boulevard Limited Partnership's demand that you immediately cease and desist any and all use of or reference to 901 West Olympic Boulevard Limited Partnership, its property, or the Project.

901 West Olympic Boulevard Limited Partnership has several options under law to enforce its legal rights. If 901 West Olympic Boulevard Limited Partnership were to file a lawsuit against you, it would be entitled to seek: (1) preliminary and permanent injunctions; (2) actual monetary damages; (3) disgorging of any profits you have realized through your use of 901 West Olympic Boulevard Limited Partnership's name, property, and images; (4)

EB-5 United LLC

July 2, 2014

Page 2

KELLER ROHRBACK L.L.P.

reimbursement of attorneys' fees required to prosecute a lawsuit against you as allowed by law; and (5) monetary damages for damage to 901 West Olympic Boulevard Limited Partnership's goodwill in the market.

Please be advised that 901 West Olympic Boulevard Limited Partnership will undertake all appropriate steps to protect its name, property, and images and its associated goodwill. You can avoid legal action by immediately ceasing and desisting from any and all infringing activity including use of 901 West Olympic Boulevard Limited Partnership's name, property, Project, and images. You must cease and desist all promotion and/or marketing of the Project's name, property, and images on any and all web sites or marketing material. You are hereby put on notice that 901 West Olympic Boulevard Limited Partnership and I will be monitoring your use of these names, property, and images for this purpose. Please remove this information immediately.

If you have any questions, please feel free to contact me.

Sincerely,



Benjamin J. Lantz
blantz@kellerrohrback.com

BJL: